

# INSOLVENCY REPORT

Insolvency Report no. 10 by the Administrators of  
**DSB Bank N.V.**

31 October 2011

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*The public insolvency reports of DSB Bank N. V. (**DSB Bank**) are published online on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com). The administrators of DSB Bank (**Administrators**) will also be using these websites in the future to publish other information concerning the case and the progress of the insolvency proceedings.*

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## **Main points of this report**

- After more than a year of intensive negotiations between the Administrators, two stakeholder organisations and five legal assistance organisations – represented by a lawyer appointed by them – (**Stakeholder Organisations**), agreement was reached on 19 September 2011 concerning a compensation scheme (**Scheme**). This Scheme covers many existing and former customers of DSB Bank with single-premium policies, investment plans, claims of excessive lending and other duty-of-care complaints. The Administrators expect the costs of the Scheme to run into several hundreds of millions of euros. For more information on the Scheme, see the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl), which is being operated jointly by the Administrators and the Stakeholder Organisations.
- On 19 September 2011, the Administrators also reached agreements with all the insurance companies concerned with customers of DSB Bank. These agreements include the financial contributions to be made by these insurance companies to the Scheme. For the benefit of customers, agreements were also made regarding the explanation of policy terms and conditions. These agreements have been entered into with the insurance entities forming part of the DSB group and with external insurers.
- It is expected that those customers who had submitted a claim before 19 September 2011 will receive a compensation proposal by the end of December 2011 at the latest. The number of complaints submitted to the DSB Bank Complaints Management Department as at 19 September 2011 totalled more than 7,400. Additionally, there are almost 2,000 members of the Stakeholder Organisations that are deemed to have submitted a complaint under the Scheme. Adjustments to eliminate double accounting still have to be made to these numbers.
- Other customers wishing to qualify for the Scheme can submit their claims via the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). To date, the names of almost 6,300 customers who had not previously submitted a complaint have been registered.

- Following the preliminary meeting of creditors and the first formal meeting of creditors, there are still 23 contested claims (from 19 creditors), totalling approximately €79.8 million, in respect of which claim validation proceedings are in progress.
- On 13 July 2011, the court in Amsterdam also allowed the €1.3 billion claim from De Nederlandsche Bank N.V. (**DNB**) as an unsecured claim, despite it being contested by Stichting Hypotheekleed and other objections. The appeal period has since lapsed without an appeal. The Administrators have therefore proceeded to pay out 15% of this now allowed claim.
- Following the ruling on 30 June 2011 by the Trade and Industry Appeals Tribunal (CBp) in a case between several DSB Bank customers and DNB, DNB has made a start with payments under the Deposit Guarantee Scheme (DGS) to certain customers with subordinated deposits.
- DSB Bank currently has approximately 138,000 loans to customers outstanding, totalling an amount of approximately €5.6 billion (multiple loans to the same borrower in some cases). DSB Bank receives approximately €26.2 million per month in interest on these loans. Between the date of the bank's collapse and the end of September 2011, DSB Bank received a total of approximately €1.8 billion in interest and loan repayments.
- The price paid for the German loan portfolio, which has been transferred to Novapars Capital, was received in the period under review.
- The Administrators raised a special short-term loan facility originally totalling €1 billion from several Dutch banks. Borrowing under the special short-term loan facility currently stands at €397 million. The Administrators expect to agree various changes to this loan facility shortly.
- Under the debt restructuring arrangements which have been in place since May 2010, 1,015 restructuring requests have been acknowledged by the bank and, of these, 1,000 customers have received a debt restructuring proposal. By far the majority of the responses so far received have been positive; 937 debt restructuring proposals have been signed and returned.
- The Administrators propose to make a second interim distribution of 4% before the end of the year.

**Prospects for creditors:**

An initial distribution was made at the end of June 2011, in connection with which the allowed preferential claims were paid in full. The pay-out made on the allowed unsecured claims was 15%. This first distribution to creditors with unsecured claims initially amounted to a total of almost €354 million. Recently, a further €195 million was paid out to DNB in respect of the DGS claim which has since been allowed.

The above pay-outs concern an initial, interim distribution. The Administrators propose to make a second interim distribution of 4% before the end of the year. The Administrators are currently unable to make any predictions regarding the overall percentage that can ultimately be paid.

The Administrators do not envisage that any pay-out will be possible on the subordinated claims.

Details of company	: <b>DSB Bank N.V.</b>
Insolvency case number	: F 09 / 798
Decision dates	: Emergency ruling: 12 October 2009
Declaration of insolvency	: 19 October 2009
Administrators	: R.J. Schimmelpenninck and B.F.M. Knüppe
Supervisory judge	: M.L.D. Akkaya (District Court at Alkmaar, Amsterdam branch)
Reporting period	: 30 July 2011 to 31 October 2011

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**Introductory remarks**

This is the tenth public insolvency report by the Administrators. It covers the period from 30 July 2011 to date (31 October 2011) and contains the financial information relating to the period ending 30 September 2011. It should be read in conjunction with the previously published reports. All the reports can be found on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com).

The insolvency of DSB Bank is legally complex. In this report, the Administrators give a simplified account of the current state of affairs in accordance with the generally accepted standards for insolvency reporting in the Netherlands. The Administrators emphasise that the information in this report is subject to closer examination. It may prove necessary to amend the information given at a later stage. It is accordingly not yet possible to make any statement concerning the completeness and accuracy of the information contained in this report.

No rights may be derived from this insolvency report and/or any subsequent reports. Nothing in this report should be interpreted as acknowledging liability or waiving any rights.

This is an unofficial English translation of the tenth report. Reliance can only be placed on the Dutch text.

In conducting their activities, the Administrators make use of the advisory and other services of Houthoff Buruma Coöperatief U.A. (**Houthoff Buruma**), PricewaterhouseCoopers Advisory N.V. (**PwC**) and various other law firms and advisers.

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**0. General information for creditors of DSB Bank****0.1 Information for customers with savings accounts, current accounts or deposit accounts that are not subordinated**

As regards the position of customers of DSB Bank with savings accounts, current accounts or deposit accounts whose claims qualified as not subordinated by virtue of the amounts owed to them, reference is made to the previous public reports.

**0.2 Subordinated deposit holders**

On 30 June 2011, the CBp ruled that the subordinated deposits offered by DSB Bank were in fact covered by the DGS. The ruling was given in a test case brought by several DSB Bank customers in the Vereniging DSBdepositos (DSB Deposits Association **VDD**).

Following this ruling by the CBp, DNB opened the Deposit Guarantee Scheme exclusively to DSB customers with subordinated deposits. In the period 1 September 2011 to 30 November 2011, these deposit holders will be able to submit claims to DNB for payment under the DGS. For further details, see the websites [www.dnb.nl](http://www.dnb.nl) and [www.dsbdepositos.nl](http://www.dsbdepositos.nl).

The CBp ruling only has implications for the relationship between customers and DNB by virtue of the DGS. The CBp's decision says nothing about the status of the subordinated deposits in the liquidation. The Administrators continue to hold the view that they should be treated as subordinated claims in the liquidation. This view of the Administrators is being challenged in test cases brought by the VDD. See Section 8.3 of this public report.

**0.3 General information for creditors who have not yet filed claims**

Creditors who have not yet filed a claim in the liquidation can still do so by submitting their claim in writing to the Administrators. Further information about allowing late claims in the creditors' meetings pursuant to Section 178 of the FW can be found in Section 8.2 of this public report.

**0.4 Complaints or counterclaims from customers with loans**

A special Scheme applies to existing and former customers of DSB Bank with single-premium policies, investment plans, claims of excessive lending and other duty-of-care complaints. Customers qualifying for this Scheme that have not submitted a complaint before 19 September 2011 can still do so via the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl) see also Section 5.3 of this public report. Customers wishing to make a complaint not related to duty of care should address their complaints to the Administrators by e-mail to [crediteuren@dsbbank.nl](mailto:crediteuren@dsbbank.nl) or by writing to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

As long as a claim (or the amount thereof) has not been finalised by an agreement with the Administrators or an irrevocable court decision, the amount of the claim cannot be set against the amount owed in respect of a loan. If it is subsequently found that a customer has paid too much in connection with the liquidation, the Administrators will repay the amount overpaid in the final settlement of the insolvent entity's debts.

#### 0.5 Payment arrangements

The Administrators have put in place various arrangements for customers with serious payment problems. See Sections 5.9 to 5.11 of this public report for details of these schemes.

### 1. **Introduction**

#### Principal activities in the most recent reporting period

- 1.1. For the principal activities of the Administrators in the most recent reporting period, see the first two pages of this public report. The Administrators also mention the following activities.
- 1.2. The Administrators continue to liaise with the directors and/or administrators of DSB Beheer B.V. and its subsidiary group companies, including with regard to the effects of the agreement with the Dutch Tax Administration and the current account positions between the entities. Meetings are also held periodically with DSB Leven N.V. (**DSB Life**), DSB Schade N.V. (**DSB Non-Life**) and life insurer Hollands Welvaren Leven N.V. (**HWL**).
- 1.3. There are also regular contacts between the Administrators and holders of pledges and/or other rights to the DSB Bank Loan Portfolio. Meetings are also regularly held with the SPVs.
- 1.4. The Administrators periodically assess whether it is opportune to proceed with selling the loan portfolio. The Administrators continue to take the view that it is in the interests of DSB Bank creditors to delay the sale of the Dutch part of the portfolio.
- 1.5. In the period under review, the Administrators continued with the usual investigations into the causes of the collapse. The Administrators refer to Section 7.5 of this public report.
- 1.6. Regular plenary meetings continue to be held with the Stakeholder Organisations even after the establishment of the Scheme. Topics of discussion include the administration of

the Scheme and monitoring of compliance with the Scheme and the content of the website. See also Section 5.3 of this public report.

## **2. Current situation**

### **2.1. Management and organisation**

See the first public report. For details of the structure of DSB Group, reference is made to the two organisation charts appended as Annex 1 to the first public report.

### **2.2. Balance sheet total on the date of the collapse**

See the first public report, in particular Annex 2.

### **2.3. Legal proceedings**

Those legal proceedings in which DSB Bank is the defendant predating the collapse have been suspended ipso jure by virtue of the insolvency. Proceedings in which DSB Life and/or DSB Non-Life are also defendants alongside DSB Bank have been suspended with respect to DSB Bank but continue with respect to DSB Life and/or DSB Non-Life. In three of these proceedings, statements of defence have been made on behalf of DSB Life and/or DSB Non-Life; the next stage is the personal appearance of the parties and consideration of the cases following the statements of defence.

A number of proceedings have also been struck off ex officio. These proceedings can be re-instigated at the request of either of the two parties involved.

Cases on which judgement was about to be pronounced when the bank was declared insolvent have not been suspended. No judgement has yet been given in any of these cases since the publication of the previous public report, so that the total number of cases in which DSB Bank is defendant adjudicated since the date of the collapse is still five.

In addition to the proceedings in which DSB Bank is defendant, a large number of cases are currently before various courts in the Netherlands brought by DSB Bank for the recovery of debts. In a number of these debt recovery cases, counterclaims have been submitted by the defendants. These cases are being examined on an ad hoc basis to see if they can be brought to a conclusion by means of an amicable settlement.

In a number of these debt recovery cases brought by DSB Bank in which counterclaims have been submitted, a joint meeting in chambers was held at the court in The Hague on 27 June 2011. In three of these cases, judgement has since been passed, on 10 August 2011 and on 12 October 2011, with the court declaring the claims by customers based on alleged dereliction of the duty of care to be inadmissible on the grounds that

they can only be brought in connection with claim validation (pursuant to Section 26 of the Insolvency Act (FW)). In passing judgement, the court did, however, take into account the alleged dereliction of duty of care as defence but the court took the view that, in the cases concerned, the allegation of an absence of duty of care did not stand because of failure to submit complaints promptly or because there was no dereliction of the duty of care. For details of said judgements, reference is made to the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl).

As far as the cases in which DSB Bank is claimant are concerned, and no counterclaim has been submitted, the desirability of pursuing the claims is being examined on an ad hoc basis. Eleven cases in which DSB Bank is claimant have been struck off ex officio. The cases concerned can be re-instigated at the request of either party.

#### 2.4. Individual cases brought before the courts since the collapse

In July 2011, the Administrators, together with DSB Life, DSB Non-Life and a number of insurance companies not forming part of the DSB Group were sued on two occasions by customers of DSB Bank. In one of these cases, a decision is due to be given. The other case is ongoing. The Administrators have not yet reached a conclusion in either case.

For an overview of the remaining claim validation proceedings see Section 8.3 of this public report.

#### 2.5. Collective proceedings

Acting on a collective basis, Stichting Hypotheekleed (chaired by P. Lakeman) has brought a case against the Administrators within the meaning of Section 3:305 a of the Netherlands Civil Code. On behalf of the customers of DSB Bank, Hypotheekleed is seeking a court ruling that out-of-court expenses will be included in the amount of damages awarded which DSB Bank may be found to be liable for vis-à-vis its customers. The Administrators argue, among other things, that deciding the amount of any out-of-court expenses to be awarded - where justifiable - should be on an ad hoc basis and account should be taken of the collective nature of the solutions being sought to the problems of duty-of-care complaints. This case was heard by the court in Amsterdam on 20 September 2011. The court's decision is expected on 2 November 2011.

#### 2.6. Insurance

See also the second public report. Where necessary, existing insurance policies have been cancelled, for example in connection with the disposal of property and other assets.

#### 2.7. Rents

*Premises rented from group entities*

DSB Bank now rents only the premises at Protonweg 32, Hoorn.

*Premises rented from third parties*

In the fourth public report, in Section 2.10, it was stated that DSB Bank would continue renting a limited portion of the premises situated at Dick Ketlaan 1-15/19 (formerly Dick Ketlaan 1-5), Dick Ketlaan 20 (formerly Dick Ketlaan 6-10) and Dick Ketlaan 21 (formerly Dick Ketlaan 11-15) in Wognum from the municipality of Medemblik up to 31 December 2011 with the right to renew the lease for a further period of one year. DSB Bank intends to exercise its right to renew the lease on the aforementioned premises up to 31 December 2012 and wishes to claim the right of renewal for a further period of one year from that date.

**3. Staff**

3.1. Number of employees at the time of the collapse

See the second public report.

3.2. Number of years of service prior to the collapse

See the second public report.

3.3. Employees

DSB Bank currently has approximately 227 employees (181.55 full-time equivalents) and 26 staff (20.1 FTEs) are employed by DSB Insurance, a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 60 self-employed persons.

To the Administrators' knowledge, more than 90% of the former employees of DSB Group have now found new jobs or become self-employed.

3.4. Provisional continuation of activities

The Administrators recently notified the majority of those staff currently still employed by DSB Bank that they will be able to remain in service until at least the third quarter of 2012. Approximately 55 employees have since been told that their employment will continue to at least the end of 2012. Approximately 15 employees have been notified that their services will continue to be necessary into 2013. The existing staff retention scheme will be continued on the same basis.

The change in the expected date of termination is based on the progress being made in the winding-up operation and on the activities within the insolvent entity in connection with the servicing of the loan portfolio and the implementation of the Scheme. It continues to be the Administrators' policy to notify the staff at the earliest possible stage concerning the expectations regarding the rundown of the activities concerned.

As work continues in 2011, employees will be given the opportunity of availing themselves of a 'mobility' programme. In offering this programme, the Administrators aim to meet the growing need among employees for training and personal development with a view to their future beyond the conclusion of activities at DSB Bank. The programme will also benefit the motivation of the remaining employees.

3.5. council and unions

The Works Council is kept regularly informed and/or involved by the Administrators regarding important matters affecting employees. Representatives of the Administrators also maintain contact with the unions.

**4. Assets**

4.1. General

For a general overview of the assets of DSB Bank at the time when the bank was declared insolvent, see Annex 2 to the first public report. For the current position, see Annex 1 to the fifth public report. To supplement these statements, the Administrators have the following comments.

4.2. Mortgages

See the previous public reports.

4.3. Registered property

See also the preceding public reports. A large proportion of the registered property has since been sold. The Administrators expect the sale of the remaining properties to be completed in the course of 2011. The efforts to sell two premises have been suspended for the time being as they are being used to provide accommodation for the organisation.

4.4. Other assets

The surplus office furniture and related equipment has been offered for sale by auction by Troostwijk Veilingen B.V. Most of the items have been sold. As regards those items which did not sell at auction, attempts are being made to sell privately. The furniture at a total of five other locations has been sold to the new owners of the premises concerned.

4.5. Sale of the receivables

A controlled bid process was followed in relation to DSB Bank's German portfolio. This process was successfully concluded in June 2011, resulting in a transaction transferring the loan portfolio to Novapars Capital. The purchase price has since been paid to DSB Bank. For more information on this transaction, see Section 4.5 of the ninth public report.

#### 4.6. Subsidiaries, associates and joint ventures

For a list of DSB Bank's various subsidiaries, associates and joint ventures, see Annex 1 to the first public report. For financial information relating to these entities, the Administrators make reference to Annex 2 to the first public report. The Administrators have the following specific remarks concerning the individual subsidiaries, associates and joint ventures of DSB Bank.

##### *Tadas Verzekeringen B.V.*

This company has now changed its name from DSB Verzekeringen B.V. to Tadas Verzekeringen B.V. The company performs the function of authorised agent for the insurance policies taken out via DSB Bank. The company is functioning normally.

Tadas Verzekeringen B.V. is also the employer of individuals who work for DSB Life, DSB Non-Life and HWL under the terms of a service level agreement (SLA).

##### *DSB Beveiliging B.V.*

For information on the insolvency of DSB Beveiliging and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

##### *DSB Leeuwarden B.V.*

For information on the insolvency of DSB Leeuwarden and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

##### *DSB Print B.V.*

For information on the insolvency of DSB Print and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

##### *Inspectrum Groep B.V.*

This company (which is not technically insolvent) was originally established as a vehicle for the demerger of DSB Bank's Collections Department. However, the Administrators note that the transfer of said department to Inspectrum Groep B.V. was never completed. The staff remained employees of DSB Bank, for instance, and there were no separate accounting systems. The Administrators are considering what to do about the situation. See Section 5.12 of this public report concerning the activities of this company.

##### *Paul.nl B.V.*

See the first public report.

*DSB Belgium N.V.*

See the fifth public report. The Administrators do not currently see sufficient reason to reopen the process of selling off the Belgian companies and portfolio. Although a number of parties have shown interest, the Administrators do not think it likely that this will lead to an acceptable offer/transaction for the creditors as a whole. It is, however, intended that the servicing activities should be contracted out to third-parties before the end of 2011, with the object of assuring the continuity of servicing of the portfolio.

*DSB Bank N.V. branch in Ljubljana /DSB Posojila d.o.o.*

See the fifth public report. The legal and administrative aspects of the closure of this branch have now been completed. Based on the settlement of the portfolio, which has been taken over locally by the former director, a very small amount of income for the insolvent entity can be expected. No further mention of these entities will therefore be made in the following public report.

*DSB Zweigstelle / DSB Deutschland GmbH / DSB Direct*

See also the previous public reports. Now that the sale and transfer of the German loan portfolio has taken place, with the buyer taking on the entire German staff, the premises and the office equipment, the affairs of these entities can be settled. Now that this scarcely has any financial implications for DSB Bank, no further mention of these entities will be made in the following public report

**4.7. Domain names**

The label Zilvervloot and associated domain names have been transferred to a third party. In connection with various transactions, a number of other domain names have also been transferred to third parties. The Administrators are currently making preparations for the sale of the remaining DSB Bank domain names.

**5. Debtors / receivables****5.1. General**

For a general overview of the receivables position of DSB Bank at the time of the collapse, reference is made to Annex 2 to the first public report. An update is provided by the 2010 Financial Report, which was appended to the ninth public report as Annex 2.

**5.2. Global Corporate Jets**

For the background, see Section 5.2 of the ninth public report.

The Administrators called in the amount owed by Corporate Global Jets on 23 August 2011, with a view to forcing the sale of the aircraft. Global Corporate Jets is currently attempting to find a private buyer for the plane. If a private sale cannot be negotiated, the process of selling off the asset will be continued.

5.3. The compensation scheme

The negotiations between the Administrators, Stichting Steunfonds Probleemhypotheeken, Stichting Platform Aandelen Lease and five legal assistance organisations (represented by the lawyer J. Lemstra, looking after the interests of those customers who were insured with the legal assistance organisations) resulted – after a period of more than a year of intensive discussions – in agreement of a Scheme on 19 September 2011.

The Scheme has been set forth in a comprehensive Heads of Agreement and applies to existing and former customers of DSB Bank with single-premium policies, investment plans and securities lending products as well as customers with complaints regarding excessive lending. The contents of the Heads of Agreement (including annexes) can be found on [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl).

The total costs to the DSB Bank insolvent entity depend in part on the personal financial situations of the individual customers and the number of customers applying for inclusion in the Scheme but will run into several hundreds of millions of euros. The Administrators estimate that in the case of approximately two-thirds of the customers qualifying for the Scheme, it will be possible to offset the amount of compensation due to them against the amount owed by them to DSB Bank. The remaining customers no longer owe DSB Bank any money and will therefore have to submit the amount of compensation as an unsecured claim in the liquidation of DSB Bank. Subsequent public reports will contain details of the number of customers accepting the Scheme and what costs are associated with it.

With the compromise which has been reached, the Administrators believe that, after a period of uncertainty, customers now know where they stand without having to pursue complicated proceedings with uncertain outcomes.

When details of the customers applying for compensation under the Scheme have been collected, the court in Amsterdam will be requested to declare the Scheme binding under the Collective Mass Claims Settlement Act (WCAM) in 2012. When the Scheme has been declared legally binding, this will also mean that in due course (after the application deadline has passed) the loan portfolio will be immune to further erosion by any new duty-of-care complaints.

Where necessary, the affected insurers are involved in the Scheme, looking after such things as the way in which the contractual termination of the single-premium policies will be settled. Agreements have also been reached on the explanation of certain policy terms and conditions for the benefit of customers. The insurers will also be making a financial contribution to the Scheme by either waiving claims for return commission in the liquidation of DSB Bank altogether or claiming smaller amounts.

In the third quarter of 2011, the Administrators and the management of DSB Life and DSB Non-Life met to discuss the Scheme to be arrived at with the Stakeholder Organisations by the Administrators, as set forth in the Heads of Agreement. In the case of HWL, it was agreed that DSB Life and DSB Bank would enable HWL to improve the rights of policyholders to reflect the lower cost deductions in respect of investment plans.

In connection with Article 2.4.3 of the Heads of Agreement, DSB Bank has made a loan facility available to DSB Fico Holding N.V. for a maximum amount of €28 million at an interest rate of EURIBOR plus 4% p.a., repayable in full on 1 October 2021. On 30 September 2011, DSB Fico Holding N.V. drew down an amount of €13 million under this facility. In accordance with the terms of the facility, DSB Fico Holding N.V. then used these funds for payment of share premium on the shares in DSB Life which it holds and DSB Life in turn used the money for payment of share premium on the ordinary shares of HWL held by the company.

#### 5.4. Costs of the Stakeholder Organisations

At the start of the negotiations with the Stakeholder Organisations – partly in view of the Supreme Court ruling in the case of *Vie d'Or* (13 October 2006, NJ 2008, 529) – it was agreed that DSB Bank would bear all reasonable costs of the negotiation process since the Stakeholder Organisations could not be expected to use their own funds for that purpose without the risk of their no longer having sufficient financial resources to take their case to court if the talks should collapse. An unconditional undertaking was given, not related to the success or otherwise of the negotiations, with a view to guaranteeing the objectivity of the Stakeholder Organisations during the negotiations.

Presented below is a summary of the expenses paid to and on behalf of the Stakeholder Organisations by DSB Bank in the period up to the end of September 2011. The costs concerned essentially relate to the time spent by the Stakeholder Organisations on the negotiation process (almost 30 plenary sessions regularly lasting a full day, numerous internal meetings, meetings with representatives of the Administrators on technical matters plus preparation and elaboration activities). This time was paid for at an hourly rate depending on the circumstances of each Stakeholder Organisation. Stichting

Hypotheekleed did not receive any payment for the period after this organisation broke off talks. The legal costs charged were based on the normal level of legal fees.

The publication of these costs is also in line with the intention of the Claims Code (albeit not a binding code) which came into operation on 1 July 2011. The activities on the part of the Administrators and their team (which were also substantial) have been included in each case in the record of hours spent stated in the Public Reports.

(This table has been corrected on 12 January 2012)

June 2010 – September 2011			€ x 1000
Organisation	Own costs	Legal fees	Total
Stichting Hypotheekleed*	444		444
Stichting Steunfonds Probleemhypotheken	76	156	232
Stichting Platform Aandelen Lease	20	264	284
Legal assistance organisations		393	393
Consultancy relating to all organisations		35	35
<b>Total</b>	<b>540</b>	<b>848</b>	<b>1,388</b>

(All expenses inclusive of VAT)

\*The costs for Stichting Hypotheekleed relate to the period up to 8 July 2011.

Following on from the Heads of Agreement, the Administrators have since also reached agreements with the Stakeholder Organisations concerned regarding the reimbursement of certain other costs and of their costs in the period from 1 October 2011 onwards, including those relating to communication and advice regarding the Scheme. For more information, see among other things Section 8.1 of the Heads of Agreement. It will also be made possible for the Stakeholder Organisations that are party to the Heads of Agreement to repay the contributions which they have received from their members.

The Administrators have not entered into any other agreements with the Stakeholder Organisations regarding reimbursement of expenses. There is a current lawsuit involving Stichting Hypotheekleed concerning out-of-court expenses in which a decision is expected on 2 November 2011. See also Section 2.5 of this public report.

#### 5.5. Settlement of complaints

The number of complaints submitted to the DSB Bank Complaints Management Department as at 19 September 2011 totalled more than 7,400. Additionally, there are almost 2,000 members of the Stakeholder Organisations that are deemed to have

submitted a complaint under the Scheme. Adjustments to eliminate double accounting still have to be made to these numbers.

The majority of the complaints relate to the alleged dereliction of the duty of care on the part of DSB Bank. A small proportion of the complaints relates to matters not concerned with the duty of care.

Since the commencement of the insolvency proceedings, a total of approximately 700 complaints have been settled. This number excludes the 937 customers that have accepted a debt restructuring proposal.

5.6. Securities lending portfolio (Hollands Welvaren Select)

The Scheme incorporates the agreement reached by the Administrators and Stakeholder Organisations on 9 December 2010 on a proposal which the Administrators would put before customers with complaints regarding Hollands Welvaren Select or a similar current securities lending product. Almost all of the affected customers have now accepted the proposals made to them (almost 2,500 customers). If requested, the Administrators will also make a proposal under the Scheme to other customers that had a Hollands Welvaren Select product.

5.7. Set-off

Under the general terms and conditions of DSB Bank, customers do not have a right to set off an amount receivable from DSB Bank against the amount they owe to DSB Bank. The Administrators have nevertheless previously agreed that, in those cases where it can be established that a customer's losses are due to dereliction of the duty of care vis-à-vis that customer, whether as a result of a court ruling or an out-of-court settlement, the consequent loss may be set against the existing amount of that customer's indebtedness to DSB Bank.

5.8. Applications under the Compensation Scheme and new complaints

Customers wishing to qualify for the Scheme can complete an application form online at [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl) or request an application form by calling +31 (0)88 372 66 66. Customers wishing to file another complaint should address their complaints to the Administrators by e-mailing [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or writing to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

5.9. Residual debt arrangements

The policy adopted by the Administrators regarding residual debt does not affect the right of customers to complain. Customers availing themselves of the residual debt arrangements agree to any compensation payable to them under the Scheme being deducted from the amount of any conditional or unconditional debt waiver.

The residual debt arrangements concern the outstanding debt which remains after a home has been sold and the proceeds have been used to pay off the mortgage. The scheme applies to customers who have recently sold their home and to customers with an existing residual debt. The basis of the scheme is that customers who are entitled to this settlement, should repay their residual debt at a rate matching their ability to pay and should be debt free after a repayment period of not more than 50 months. Customers with no ability to make repayments will be allowed a period of grace of 12 months, after which their position will be reassessed.

5.10. Debt restructuring arrangements

With the implementation of the Scheme, customers claiming to have payment problems are referred to the Scheme. Customers with serious financial problems, for whom the compensation provided is insufficient, will qualify for debt restructuring (or further alleviation), provided they were already seriously overindebted when they took out a loan and are now unable to meet their payments. The waiver of part of the principal in connection with debt restructuring does not have any basis in law but reflects sound credit management practice. The debt restructuring proposal is a one-off proposal which is not negotiable.

To date, 2,421 debt restructuring applications have been assessed, of which 54.9% have been rejected. Customers whose debt restructuring application is rejected automatically receive a proposal under the Compensation Scheme. A total of 1,000 customers have so far received a debt restructuring proposal. Of these, 937 have been signed in agreement and returned. At some point, all debt restructuring proposals will be recalculated under the Scheme to ascertain whether customers might be entitled to a greater amount of compensation. This is expected to be the case with respect to a very limited number of claims. The customers concerned will be advised accordingly in due course.

5.11. Temporary payment arrangements

Customers facing acute financial problems can apply to the Administrators for temporary payment arrangements to be made. Customers wishing to qualify for temporary payment arrangements are required to submit a standard list of their income and expenditure, which can be found on the website [www.dsbbank.nl](http://www.dsbbank.nl). If warranted by a particular customer's income situation, the customer will be offered a temporary reduction in the monthly payments.

5.12. Payment collection

Even customers expecting to receive a compensation proposal or who have recently made an application under the Scheme are required to continue paying. It is the established policy of the Administrators that even customers with a complaint are

required to continue paying their monthly instalments in full. If a customer falls into arrears, the debt collection agency Incassobureau Inspectrum will be called in. Various arrangements are in place for customers with serious payment problems (see Sections 5.9, 5.10 and 5.11 of this public report).

## **6. Bank finances / collateral security held**

### **6.1. Financial statements**

**Annex 1** to this public report contains (i) a summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of September 2011 and (ii) a financial summary of the income and expenditure of the insolvent DSB Bank during the third quarter of 2011.

### **6.2. Credit facilities**

For a summary of the credit facilities and the associated collateral security provided, reference is made to Annex 2 to the first public report.

Borrowing under the special short-term loan facility currently stands at €397 million (ninth report: €380 million). The special short-term loan facility can also be used to make interim distributions to the allowed unsecured creditors. The Administrators expect to agree various changes to this loan facility shortly

### **6.3. Servicing of loan portfolios**

As stated in Section 6.3 of the ninth public report, the transition agreement between the Administrators and Quion signed on 29 June 2011 includes agreements covering the technically complex conversion and migration process. The Administrators do, however, now have concerns regarding the feasibility of the timetable and are monitoring developments closely.

### **6.4. Securitisation programmes**

Regular reports containing the most important information relating to the underlying loan portfolios are prepared on behalf of the SPVs for the individual programmes. This information forms part of the regular reporting by the SPVs to their noteholders.

The Administrators also have regular meetings with the SPVs and provide information to the noteholders in conference calls organised by the SPVs. These took place on 24 March and 13 July 2011. On these occasions, the rating agencies were also separately advised concerning the recent developments. In addition to the general developments surrounding the insolvency, these conference calls covered the status of the DSB Bank organisation, servicing of the portfolios, arrears, carrying-over rate policy and duty-of-

care issues. Additionally, in a separate conference call on 29 April 2011, the Administrators talked to the rating agencies about the impact of a possible compensation scheme for single-premium policies on the loans in the securitisation programmes, without anticipating the possible outcomes of the discussions with the Stakeholder Organisations. This information was made available by the SPVs to the noteholders.

In a conference call with noteholders on 29 August 2011, the SPVs explained the contract concluded between DSB Bank and Quion for the transfer of the DSB Bank loan portfolio servicing to Quion with effect from mid-2012. On 7 and 21 September 2011, the noteholders ratified the contract and also agreed to the entry of the SPVs to this contract.

Following the announcement of the Scheme, the Administrators also advised the SPVs regarding the impact of this Scheme on the securitisation programmes. On 27 October 2011, the SPVs organised a conference call in which more than 110 noteholders participated. In this conference call, the SPVs advised the noteholders regarding the effects of the Scheme and answered questions from noteholders.

6.5. Lease contracts

DSB Bank is still party to approximately 42 lease contracts relating to company cars in use by DSB Bank and DSB Group staff. The related costs are passed on to the appropriate companies / insolvent entities, as applicable.

6.6. Description of collateral security furnished

The validity of the collateral security furnished by DSB Bank is still under investigation and the Administrators reserve all rights in that regard.

6.7. Retention of title, rights of recovery and possessory liens

To date, no parties have come forward claiming retention of title, rights of recovery or possessory liens. The Administrators are therefore assuming that no such rights exist in this insolvency.

6.8. Hedges

The Administrators hold negotiations with the swap counterparties about the claim they submitted.

6.9. Interest rate policy

For the current interest rate and penalty policy pursued by the Administrators, see Section 6.9 of the ninth public report. The policy on interest rates and penalties adopted by the Administrators can also be found on the website [www.dsbbank.nl](http://www.dsbbank.nl).

## **7. Lawfulness**

### **7.1. Duty to keep proper accounts**

In the course of 2010, it became apparent to the Administrators that, in a number of cases, the loan documentation was not available in a readily accessible manner. Following an investigation ordered by the Administrators into the quality of the accounting and record-keeping systems, it was decided to call in professional assistance to implement the necessary improvements. These activities have since been completed. The Administrators are currently having any inventory of the other administrative records and documentation prepared. The aim is to properly organise everything which needs to be kept and to destroy all remaining documents.

### **7.2. Filing of financial statements**

See the first public report.

### **7.3. Unqualified auditors' report**

See the first public report.

### **7.4. Commitment to make payments on shares**

See the first public report.

### **7.5. Improper management**

In July 2011, the Administrators completed the final interviews with the parties concerned. The final draft minutes of these interviews were sent to the parties concerned at the beginning of August 2011 for their comments. Almost all the parties concerned returned their comments on the draft minutes of the interviews within the requested period of 14 days. Messrs Van Goor, Buwalda and Linschoten and the external auditors Ernst & Young only submitted their comments in the course of October 2011. This has delayed the investigation.

In the period under review, the Administrators worked on the factual part of the report. When the draft report is ready, which is expected to be at the beginning of December 2011, it will be presented to the various parties that have accepted the protocol for them to comment, for which they have a period of one month. These comments will then be processed and the Administrators will append to the report a summary and an evaluation of the causes of the collapse. The report is not expected to be published any earlier than the end of January 2012.

Based on an analysis of the findings of their investigation, the Administrators will draw conclusions regarding the possible accountability of the existing and former executive/supervisory directors of DSB Bank and/or third parties.

7.6. Fraudulent action in respect of creditors

This is the subject of further investigation.

**8. Creditors / payables**

8.1. Creditors Committee

The definitive creditors' committee is made up of Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof. Once again in the recent reporting period, three full meetings of the Administrators and the creditors' committee were held, one in August and two in September 2011. At these meetings, the developments surrounding the settlement of the liquidation were discussed, with telephone and written contacts taking place in the interim as necessary. Formal requests for advice on proposed decisions are made by the Administrators to the creditors' committee.

8.2. Future meetings of creditors pursuant to Section 178 of the Insolvency Act (FW)

Following the preliminary meeting of creditors and the first formal meeting of creditors held on 19 May 2011, there will be one or more separate creditors' meetings as provided by Section 178 of the Insolvency Act (FW) convened by the supervisory judge in order to allow the claims of customers with claims relating to duty of care and creditors with subordinated claims (see Annex 4 to the fifth public report). Such creditors' meetings will also be held if the settlement of claims filed by the SPVs and certain insurance companies makes it desirable to do so (see Annex 1 to the sixth public report).

At these subsequent meetings of creditors, it will also be possible to consider other claims not dealt with previously for whatever reason.

8.3. Remaining claim validation proceedings

During the meetings held on 10 December 2010 and 19 May 2011, a total of 64 claims was contested (concerning 57 creditors). There are currently 23 cases to be decided in claim validation proceedings (concerning 19 creditors). These proceedings relate to claims contested by the Administrators amounting to a total of approximately €79.8 million. In relation to these claim validation proceedings, the Administrators have the following comments.

*Claims by DNB*

Two of the claim validation proceedings relate to claims submitted by DNB. The first of these claims concerns an amount of €8.9 million relating to the costs of administering the DGS. Following a constructive dialogue with the Administrators, DNB has decided to withdraw this claim. The case will be removed from the cause list on the next occasion.

#### *Business creditors*

A number of claim validation proceedings relate to claims from DSB Bank business creditors. See also Section 8.4 of the ninth public report. In the majority of these proceedings, the Administrators have since put their case.

#### *Financial institutions*

Two of the claim validation proceedings relate to claims submitted by financial institutions. Société Générale and NIBC argue that they have a claim by reason of early termination of the back swaps under the securitisation programmes Dome 2006 and Monastery 2004. Both proceedings have been suspended in connection with composition negotiations.

#### *Duty of care*

A number of claim validation proceedings relate to claims from customers of DSB Bank in relation to possible dereliction of the duty of care on the part of DSB Bank. These cases had already been brought before the date of the collapse and their status continues to be that obtaining at the time of the declaration of insolvency. No material progress is being made with these cases for the present.

#### *Employees*

Two claim validation proceedings have also been brought relating to claims from former employees of DSB Bank. In one of these cases, the Administrators have contested a claimed bonus on the grounds of insufficient evidence of entitlement. The Administrators have since put their case in these proceedings.

In the other case, the former employee claims that the interest he is playing on a mortgage loan is too high. This claim has been rejected. The period in which the decision can be appealed has, however, not yet expired.

#### *Skaters*

Two claim validation proceedings relate to claims from skaters who were formerly part of the DSB skating team. They are claiming competition money and training costs. The two skaters, however, have previously declared in writing that they have no further claims on DSB Bank, and their claims are accordingly contested by the Administrators. The Administrators are currently negotiating with the two individuals concerning a possible composition.

*Subordinated deposit holders*

A number of claim validation proceedings relate to claims from holders of subordinated deposits. These creditors have associated themselves with the VDD. Their claims are seen by the VDD as test cases. These test cases will be heard jointly on 16 February 2012.

In another claim validation proceeding relating to a subordinated deposit holder, the creditor argues that the contract is null and void on the grounds of error and that she paid the amount by mistake. The Administrators contest the claim based on mistaken payment. This case has already been heard. The Administrators now have the opportunity to respond in writing to the arguments put forward.

*Interest*

A number of claim validation proceedings also relate to claims concerning interest since the date of the collapse. The Administrators contest these claims on the grounds of Section 128 of the FW. These cases have since been either decided or withdrawn.

**8.4. Claims contested by fellow creditors**

At the creditors' meeting held on 10 December 2010, an amount of €1.3 billion of the claim made by DNB out of a total of more than €3.5 billion was contested by Stichting Hypotheekleed and Stichting Centralebankclaim. The case concerns a claim from DNB relating to payments made under the DGS. The court in Amsterdam rejected the claim made by the foundations in a judgement given on 13 July 2011. The appeal period has now lapsed without an appeal. This means that the total amount of the claim by DNB relating to payments made under the DGS has now been allowed.

The above contested claim was conditionally allowed by the supervisory judge and, as such, was placed on the distribution list for the first interim distribution. The Administrators have since paid the reserved amount of €195 million to DNB.

**8.5. Liabilities of the insolvent entity**

In view of the position of the insolvent entity, the Administrators will shortly pay amounts agreed by them as being owed by the insolvent entity.

**9. Miscellaneous****9.1. Tax matters**

See Section 9.1 of the ninth public report.

9.2. Netherlands Authority for the Financial Markets (AFM)

The Administrators hold meetings with the AFM to discuss current issues on a quarterly basis.

9.3. Provision of information

DSB Bank customers are notified in writing regarding relevant decisions by the Administrators or actions which they should take. The Administrators also provide information on the website [www.dsbbank.nl](http://www.dsbbank.nl) and customers can request information by e-mailing [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl). Customers can also telephone the DSB Bank call centre on +31 (0)88 372 30 00. Lines are open on business days from 09:00 to 17:00.

9.4. Activities and time spent

The Administrators have engaged various parties to provide support with the liquidation process, including Houthoff Buruma (legal and tax consultancy), PwC (accountancy, tax consultancy and IT-related services) and Kempen & Co (professional services in connection with the sale of the Loan Portfolio). The services of various other outside specialists have also been used.

The Administrators along with the legal and tax consultants of Houthoff Buruma have together devoted 4,889.5 hours in the period 1 July 2011 to 30 September 2011 on the liquidation of DSB Bank. During the same period, PwC spent 838,5 hours on the liquidation of DSB Bank.

9.5. Timetable for the settlement of the liquidation

The Administrators expect to still be engaged in intensive activity connected with the winding-up operation for the entire duration of 2011 and 2012. Residual activities beyond 2012 are bound to take several more years, albeit becoming less intensive.

9.6. Plan of approach

The Administrators and the organisation of the insolvent entity will continue to work methodically on the settlement of the insolvency. The Administrators will also be concentrating on the continuation and servicing of the loan portfolio, the ongoing recording and validation of creditors, the liquidation of the assets and the investigation into the causes of the collapse. In addition, the Administrators will be paying particular attention to the proper implementation of the Scheme.

9.7. Filing of the next report

Expected at the end of January 2012.

R.J. Schimmelpenninck

B.F.M. Knüppe

*Administrator*

*Administrator*

**Annexes:**

Annex 1: Summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of September 2011 and of the income and expenditure during the third quarter of 2011.